IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 26517 of 2004(F)

PETITIONER:

SIVANANDAN C., AGED 50 YEARS,
S/O. AYYAPPAN, CHERIYIL HOUSE,
ESWARAMANGALAM POST, PONNANI, MALAPPURAM DISTRICT.

BY ADV. SRI.JACOB ABRAHAM
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:

REGISTRAR OF BIRTHS AND DEATHS,
PONNANI MUNICIPALITY, PONNANI, MALAPPURAM DISTRICT

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 26517/2004 F

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE IST PAGE OF THE SSLC BOOK OF PETITIONER'S SON.

EXT.P2. COPY OF THE EXTRACT OF A PAGE OF THE PASSPORT OF THE PETITIONER'S SON.

EXT.P3. COPY OF THE APPLICATION DT. 24/08/2004 BY THE PETITIONER TO THE RESPONDENT.

EXT.P4. COPY OF THE DECLARATION DT. 24/08/04 OF C. MURALEEDHARAN.

EXT.P5. COPY OF THE DECLARATION DT. 24/08/2004 OF C. ABDULLAKUTTY.

EXT.P6. COPY OF THE ORDER DT.24/08/2004 BY THE RESPONDENT TO THE PETITIONER

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE CERTIFICATE OF BIRTH ISSUED TO THE PETITIONER BY THE SUB REGISTRAR OF BIRTHS AND DEATHS, EZHUVANTHIRUTHY PANCHAYATH DT.26/8/83.

EXT.R1B. COPY OF THE CIRCULAR BY THE chief REGISTRAR OF BIRTHS AND DEATHS.

True copy

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THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.26517 OF 2004

Dated this the 12th day of July, 2007

JUDGMENT

The petitioner is the father of the pupil, in relation to whom, the Education Department has issued Ext.P1 certificate, which shows the name and date of birth of that pupil. According to the petitioner, Ext.P2 is a copy of the passport issued to his son. Ext.R1(a) shows that the birth of one 'Samal' on 17.8.1983 is registered on 26.8.1983 and on that day itself, a certificate of such registration of birth is issued. The controversy is as to whether the petitioner's son is 'Samal' in Ext.R1(a) and still further, as to whether, if that be so, could the date of birth as disclosed in Ext.R1(a), be corrected. The plea of the petitioner is that he was employed elsewhere in the service of the Indian Army at the time of the birth of his son and his semi-literate brother had furnished details, which would have resulted in any registration, if at all there is one.

2. Going by the counter affidavit of the Municipal authorities, the petitioner had applied for certificate as to non-registration of

the birth of his son and he later withdrew it when faced with the Municipality insisting on the factum of registration as disclosed by Ext.R1(a).

3. The aforesaid would show that there could be controversy as to the identity of the person to whom Ext.R1(a) registration relates. It could also be a case where there is an error in the register in its form and substance.

4. Section 15 of the Registration of Births and Deaths Act, 1969, hereinafter referred to as 'the Act' and Rule 11 of the Kerala Registration of Births and Deaths Rules, 1999, hereinafter, “the Rules”, are relevant in this context. They read as follows:

Section 15. Correction or cancellation of entry in the register of births and deaths:

> If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by State Government with respect to the conditions on which and the circumstances in which such entries may be

corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.

Rule 11. Correction or cancellation of entry in the register of births and deaths:

(1) If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is other wise noticed by him the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in section 15 and shall send an extract of the entry showing the error and how it has been corrected to the State Government or the officer specified by it in this behalf.

(2) If any person asserts that any entry in the register of births an deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under section 15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

(3) Notwithstanding anything contained in sub-rule (1) and sub-rule (2) the Registrar shall make a report of any correction of the kind referred to therein giving necessary details to the State Government or the officer specified in this behalf.

> (4) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorised by the Chief Registrar by general or special order in this behalf under section 25 and on hearing from him take necessary action in the matter.
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> (5) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under section 8 or section 9.

5. Section 15 of the Act provides the power to the Registrar to make suitable endorsements as provided in the said Section, cancelling any entry or, correcting the errors in cases where it is proved to the satisfaction of the Registrar that any entry of a birth in the register kept by him is erroneous in form or substance or had been fraudulently or improperly made. While Section 15 requires the Registrar to act subject to such rules as may be made by the State Government regarding the conditions and circumstances in which the entries may be corrected or cancelled, Rule 11 of the Rules relates only to correction of errors of a clerical or formal nature. The said rule does not take

within its sweep, the circumstances and conditions on which an error of a substantial nature or an error in “substance” could be corrected, though the Registrar has the power to make such corrections also, under Section 15 of the Act. This means, in cases where there is an error in “substance”, the rules as they stand, do not provide any condition or procedure. All that Section 15 enjoins is that if there is a rule prescribing conditions and procedure, that would be binding. It does not mean that the power of the Registrar under Section 15 of the Act is dependent on the existence of a rule. There is no rule prescribing condition or procedure for correction of an error, which is an error in “substance”. Existence of power under Section 15 to correct such an error does not depend upon the existence of a rule prescribing the conditions. The Registrar would be well within authority to act under Section 15 and correct an error if it is an error in “substance”, without insisting that such error can be corrected only if it is a formal or a clerical one. In doing so, in view of the absence of any guidelines in that regard, by way of primary or subordinate legislation, the Registrar, being a statutory and public authority, is bound to act

in terms of justice, equity and good conscience and to follow the principles of natural justice and other recognised canons for the exercise of statutory power.

6. In the aforesaid circumstances, the request of the petitioner, for correction, ought to have been considered in the light of what is stated above.

In the result, this writ petition is allowed quashing Ext.P6 and directing re-consideration of Ext.P3 application or any other application that the petitioner may make, in the light of what is stated above and a decision shall be taken after insisting on appropriate materials to support his contentions.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.